

1 **SENATE FLOOR VERSION**

2 February 18, 2020

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1418

By: Dahm of the Senate

and

Gann of the House

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9 An Act relating to the Physician Advisory Committee;
10 amending Section 50, Chapter 208, O.S.L. 2013, as
11 amended by Section 20, Chapter 476, O.S.L. 2019 (85A
12 O.S. Supp. 2019, Section 50), which relates to
13 medical examination and treatment; removing authority
14 to establish parameters for certain maintenance or
15 treatment; repealing Section 17, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2019, Section 17), which relates
17 to appointment and duties; repealing Section 60,
18 Chapter 208, O.S.L. 2013, as amended by Section 22,
19 Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019,
20 Section 60), which relates to adoption of alternative
21 method to evaluate permanent disability; and
22 providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. AMENDATORY Section 50, Chapter 208, O.S.L.
2013, as amended by Section 20, Chapter 476, O.S.L. 2019 (85A O.S.
Supp. 2018, Section 50), is amended to read as follows:

Section 50. A. The employer shall promptly provide an injured
employee with medical, surgical, hospital, optometric, podiatric,
and nursing services, along with any medicine, crutches, ambulatory

1 devices, artificial limbs, eyeglasses, contact lenses, hearing aids,
2 and other apparatus as may be reasonably necessary in connection
3 with the injury received by the employee. The employer shall have
4 the right to choose the treating physician.

5 B. If the employer fails or neglects to provide medical
6 treatment within five (5) days after actual knowledge is received of
7 an injury, the injured employee may select a physician to provide
8 medical treatment at the expense of the employer; provided, however,
9 that the injured employee, or another in the employee's behalf, may
10 obtain emergency treatment at the expense of the employer where such
11 emergency treatment is not provided by the employer.

12 C. Diagnostic tests shall not be repeated sooner than six (6)
13 months from the date of the test unless agreed to by the parties or
14 ordered by the Commission for good cause shown.

15 D. Unless recommended by the treating doctor at the time
16 claimant reaches maximum medical improvement or by an independent
17 medical examiner, continuing medical maintenance shall not be
18 awarded by the Commission. The employer or insurance carrier shall
19 not be responsible for continuing medical maintenance or pain
20 management treatment that is outside the parameters established by
21 the ~~Physician Advisory Committee~~ or ODG. The employer or insurance
22 carrier shall not be responsible for continuing medical maintenance
23 or pain management treatment not previously ordered by the
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1 Commission or approved in advance by the employer or insurance
2 carrier.

3 E. An employee claiming or entitled to benefits under this act,
4 shall, if ordered by the Commission or requested by the employer or
5 insurance carrier, submit himself or herself for medical
6 examination. If an employee refuses to submit himself or herself to
7 examination, his or her right to prosecute any proceeding under this
8 act shall be suspended, and no compensation shall be payable for the
9 period of such refusal.

10 F. For compensable injuries resulting in the use of a medical
11 device, ongoing service for the medical device shall be provided in
12 situations including, but not limited to, medical device battery
13 replacement, ongoing medication refills related to the medical
14 device, medical device repair, or medical device replacement.

15 G. The employer shall reimburse the employee for the actual
16 mileage in excess of twenty (20) miles round-trip to and from the
17 employee's home to the location of a medical service provider for
18 all reasonable and necessary treatment, for an evaluation of an
19 independent medical examiner and for any evaluation made at the
20 request of the employer or insurance carrier. The rate of
21 reimbursement for such travel expense shall be the official
22 reimbursement rate as established by the State Travel Reimbursement
23 Act. In no event shall the reimbursement of travel for medical
24 treatment or evaluation exceed six hundred (600) miles round trip.

1 H. Fee Schedule.

2 1. The Commission shall conduct a review and update of the
3 Current Procedural Terminology (CPT) in the Fee Schedule every two
4 (2) years pursuant to the provisions of paragraph 14 of this
5 subsection. The Fee Schedule shall establish the maximum rates that
6 medical providers shall be reimbursed for medical care provided to
7 injured employees, including, but not limited to, charges by
8 physicians, dentists, counselors, hospitals, ambulatory and
9 outpatient facilities, clinical laboratory services, diagnostic
10 testing services, and ambulance services, and charges for durable
11 medical equipment, prosthetics, orthotics, and supplies. The most
12 current Fee Schedule established by the Administrator of the
13 Workers' Compensation Court prior to February 1, 2014, shall remain
14 in effect, unless or until the Legislature approves the Commission's
15 proposed Fee Schedule.

16 2. Reimbursement for medical care shall be prescribed and
17 limited by the Fee Schedule. The director of the Employees Group
18 Insurance Division of the Office of Management and Enterprise
19 Services shall provide the Commission such information as may be
20 relevant for the development of the Fee Schedule. The Commission
21 shall develop the Fee Schedule in a manner in which quality of
22 medical care is assured and maintained for injured employees. The
23 Commission shall give due consideration to additional requirements
24 for physicians treating an injured worker under this act, including,

1 but not limited to, communication with claims representatives, case
2 managers, attorneys, and representatives of employers, and the
3 additional time required to complete forms for the Commission,
4 insurance carriers, and employers.

5 3. In making adjustments to the Fee Schedule, the Commission
6 shall use, as a benchmark, the reimbursement rate for each Current
7 Procedural Terminology (CPT) code provided for in the fee schedule
8 published by the Centers for Medicare and Medicaid Services of the
9 U.S. Department of Health and Human Services for use in Oklahoma
10 (Medicare Fee Schedule) on the effective date of this section,
11 workers' compensation fee schedules employed by neighboring states,
12 the latest edition of "Relative Values for Physicians" (RVP), usual,
13 customary and reasonable medical payments to workers' compensation
14 health care providers in the same trade area for comparable
15 treatment of a person with similar injuries, and all other data the
16 Commission deems relevant. For services not valued by CMS, the
17 Commission shall establish values based on the usual, customary and
18 reasonable medical payments to health care providers in the same
19 trade area for comparable treatment of a person with similar
20 injuries.

21 a. No reimbursement shall be allowed for any magnetic
22 resonance imaging (MRI) unless the MRI is provided by
23 an entity that meets Medicare requirements for the
24 payment of MRI services or is accredited by the

1 American College of Radiology, the Intersocietal
2 Accreditation Commission or the Joint Commission on
3 Accreditation of Healthcare Organizations. For all
4 other radiology procedures, the reimbursement rate
5 shall be the lesser of the reimbursement rate allowed
6 by the 2010 Oklahoma Fee Schedule and two hundred
7 seven percent (207%) of the Medicare Fee Schedule.

8 b. For reimbursement of medical services for Evaluation
9 and Management of injured employees as defined in the
10 Fee Schedule adopted by the Commission, the
11 reimbursement rate shall not be less than one hundred
12 fifty percent (150%) of the Medicare Fee Schedule.

13 c. Any entity providing durable medical equipment,
14 prosthetics, orthotics or supplies shall be accredited
15 by a CMS-approved accreditation organization. If a
16 physician provides durable medical equipment,
17 prosthetics, orthotics, prescription drugs, or
18 supplies to a patient ancillary to the patient's
19 visit, reimbursement shall be no more than ten percent
20 (10%) above cost.

21 d. The Commission shall develop a reasonable stop-loss
22 provision of the Fee Schedule to provide for adequate
23 reimbursement for treatment for major burns, severe
24 head and neurological injuries, multiple system

1 injuries, and other catastrophic injuries requiring
2 extended periods of intensive care. An employer or
3 insurance carrier shall have the right to audit the
4 charges and question the reasonableness and necessity
5 of medical treatment contained in a bill for treatment
6 covered by the stop-loss provision.

7 4. The right to recover charges for every type of medical care
8 for injuries arising out of and in the course of covered employment
9 as defined in this act shall lie solely with the Commission. When a
10 medical care provider has brought a claim to the Commission to
11 obtain payment for services, a party who prevails in full on the
12 claim shall be entitled to reasonable attorney fees.

13 5. Nothing in this section shall prevent an employer, insurance
14 carrier, group self-insurance association, or certified workplace
15 medical plan from contracting with a provider of medical care for a
16 reimbursement rate that is greater than or less than limits
17 established by the Fee Schedule.

18 6. A treating physician may not charge more than Four Hundred
19 Dollars (\$400.00) per hour for preparation for or testimony at a
20 deposition or appearance before the Commission in connection with a
21 claim covered by the Administrative Workers' Compensation Act.

22 7. The Commission's review of medical and treatment charges
23 pursuant to this section shall be conducted pursuant to the Fee
24 Schedule in existence at the time the medical care or treatment was

1 provided. The judgment approving the medical and treatment charges
2 pursuant to this section shall be enforceable by the Commission in
3 the same manner as provided in this act for the enforcement of other
4 compensation payments.

5 8. Charges for prescription drugs dispensed by a pharmacy shall
6 be limited to ninety percent (90%) of the average wholesale price of
7 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
8 prescription. "Average wholesale price" means the amount determined
9 from the latest publication designated by the Commission.

10 Physicians shall prescribe and pharmacies shall dispense generic
11 equivalent drugs when available. If the National Drug Code, or
12 "NDC", for the drug product dispensed is for a repackaged drug, then
13 the maximum reimbursement shall be the lesser of the original
14 labeler's NDC and the lowest-cost therapeutic equivalent drug
15 product. Compounded medications shall be billed by the compounding
16 pharmacy at the ingredient level, with each ingredient identified
17 using the applicable NDC of the drug product, and the corresponding
18 quantity. Ingredients with no NDC area are not separately
19 reimbursable. Payment shall be based on a sum of the allowable fee
20 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
21 per prescription.

22 9. When medical care includes prescription drugs dispensed by a
23 physician or other medical care provider and the NDC for the drug
24 product dispensed is for a repackaged drug, then the maximum

1 reimbursement shall be the lesser of the original labeler's NDC and
2 the lowest-cost therapeutic equivalent drug product. Payment shall
3 be based upon a sum of the allowable fee for each ingredient plus a
4 dispensing fee of Five Dollars (\$5.00) per prescription. Compounded
5 medications shall be billed by the compounding pharmacy.

6 10. Implantables are paid in addition to procedural
7 reimbursement paid for medical or surgical services. A
8 manufacturer's invoice for the actual cost to a physician, hospital
9 or other entity of an implantable device shall be adjusted by the
10 physician, hospital or other entity to reflect, at the time
11 implanted, all applicable discounts, rebates, considerations and
12 product replacement programs and shall be provided to the payer by
13 the physician or hospital as a condition of payment for the
14 implantable device. If the physician, or an entity in which the
15 physician has a financial interest other than an ownership interest
16 of less than five percent (5%) in a publically traded company,
17 provides implantable devices, this relationship shall be disclosed
18 to patient, employer, insurance company, third-party commission,
19 certified workplace medical plan, case managers, and attorneys
20 representing claimant and defendant. If the physician, or an entity
21 in which the physician has a financial interest other than an
22 ownership interest of less than five percent (5%) in a publicly
23 traded company, buys and resells implantable devices to a hospital
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1 or another physician, the markup shall be limited to ten percent
2 (10%) above cost.

3 11. Payment for medical care as required by this act shall be
4 due within forty-five (45) days of the receipt by the employer or
5 insurance carrier of a complete and accurate invoice, unless the
6 employer or insurance carrier has a good-faith reason to request
7 additional information about such invoice. Thereafter, the
8 Commission may assess a penalty up to twenty-five percent (25%) for
9 any amount due under the Fee Schedule that remains unpaid on the
10 finding by the Commission that no good-faith reason existed for the
11 delay in payment. If the Commission finds a pattern of an employer
12 or insurance carrier willfully and knowingly delaying payments for
13 medical care, the Commission may assess a civil penalty of not more
14 than Five Thousand Dollars (\$5,000.00) per occurrence.

15 12. If an employee fails to appear for a scheduled appointment
16 with a physician, the employer or insurance company shall pay to the
17 physician a reasonable charge, to be determined by the Commission,
18 for the missed appointment. In the absence of a good-faith reason
19 for missing the appointment, the Commission shall order the employee
20 to reimburse the employer or insurance company for the charge.

21 13. Physicians providing treatment under this act shall
22 disclose under penalty of perjury to the Commission, on a form
23 prescribed by the Commission, any ownership or interest in any
24 health care facility, business, or diagnostic center that is not the

1 physician's primary place of business. The disclosure shall include
2 any employee leasing arrangement between the physician and any
3 health care facility that is not the physician's primary place of
4 business. A physician's failure to disclose as required by this
5 section shall be grounds for the Commission to disqualify the
6 physician from providing treatment under this act.

7 14. a. Beginning on the effective date of this act, the
8 Commission shall conduct an evaluation of the Fee
9 Schedule, which shall include an update of the list of
10 Current Procedural Terminology (CPT) codes, a line
11 item adjustment or renewal of all rates, and amendment
12 as needed to the rules applicable to the Fee Schedule.

13 b. The Commission shall contract with an external
14 consultant with knowledge of workers' compensation fee
15 schedules to review regional and nationwide
16 comparisons of Oklahoma's Fee Schedule rates and date
17 and market for medical services. The consultant shall
18 receive written and oral comment from employers,
19 workers' compensation medical service and insurance
20 providers, self-insureds, group self-insurance
21 associations of this state and the public. The
22 consultant shall submit a report of its findings and a
23 proposed amended Fee Schedule to the Commission.

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1 c. The Commission shall adopt the proposed amended Fee
2 Schedule in whole or in part and make any additional
3 updates or adjustments. The Commission shall submit a
4 proposed updated and adjusted Fee Schedule to the
5 President Pro Tempore of the Senate, the Speaker of
6 the House of Representatives and the Governor. The
7 proposed Fee Schedule shall become effective on July 1
8 following the legislative session, if approved by
9 Joint Resolution of the Legislature during the session
10 in which a proposed Fee Schedule is submitted.

11 d. Beginning on the effective date of this act, an
12 external evaluation shall be conducted and a proposed
13 amended Fee Schedule shall be submitted to the
14 Legislature for approval during the 2020 legislative
15 session. Thereafter, an external evaluation shall be
16 conducted and a proposed amended Fee Schedule shall be
17 submitted to the Legislature for approval every two
18 (2) years.

19 I. Formulary. The Commission by rule shall adopt a closed
20 formulary. Rules adopted by the Commission shall allow an appeals
21 process for claims in which a treating doctor determines and
22 documents that a drug not included in the formulary is necessary to
23 treat an injured employee's compensable injury. The Commission by
24 rule shall require the use of generic pharmaceutical medications and

1 clinically appropriate over-the-counter alternatives to prescription
2 medications unless otherwise specified by the prescribing doctor, in
3 accordance with applicable state law.

4 SECTION 2. REPEALER Section 17, Chapter 208, O.S.L. 2013
5 (85A O.S. Supp. 2019, Section 17), is hereby repealed.

6 SECTION 3. REPEALER Section 60, Chapter 208, O.S.L.
7 2013, as amended by Section 22, Chapter 476, O.S.L. 2019 (85A O.S.
8 Supp. 2019, Section 60), is hereby repealed.

9 SECTION 4. This act shall become effective November 1, 2020.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
11 February 18, 2020 - DO PASS AS AMENDED
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